



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
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September 12, 2013

Roger J. Knutzen, Commissioner/Secretary
Skagit County Drainage and Irrigation Improvement District No. 14
9255 Chuckanut Drive
Burlington, WA 98233

RE: Water Quality Certification Order #10103 for U.S. Army Corps of Engineers Public Notice
#NWS-2012-1165, Skagit DID 14 Drainage System Improvements Project, Joe Leary Slough and
South Spur Ditch, Skagit County, Washington

Dear Mr. Knutzen:

On December 14, 2012, Skagit County Drainage and Irrigation Improvement District No. 14 submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed Skagit DID 14 Drainage System Improvements project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,


Erik Stockdale, Interim Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

ES:rrp:cja

Enclosure

By certified mail: 7012 1640 0000 7227 8164

cc: Randel Perry, U.S. Army Corps of Engineers
Brandon Roozen, Western Washington Agricultural Association
Michael Rundlett, Western Washington Agricultural Association
Brian Williams, Washington Department of Fish and Wildlife
Steve Hinton, Skagit River System Cooperative
Stan Walsh, Skagit River System Cooperative
Tom Sibley, NOAA Fisheries
e-cc: Mak Kaufman – BFO
Loree' Randall – HQ
Raman Iyer – NWRO
ecyrefedpermits@ecy.wa.gov



IN THE MATTER OF GRANTING A) ORDER #10103
WATER QUALITY) Corps Reference #NWS-2012-1165
CERTIFICATION TO) Skagit DID 14 Drainage System Improvements
SKAGIT COUNTY DRAINAGE AND) Project; Joe Leary Slough and South Spur Ditch,
IRRIGATION IMPROVEMENT) Skagit County, Washington.
DISTRICT NO. 14)
 in accordance with 33 U.S.C. 1341)
 (FWPCA § 401), RCW 90.48.120, RCW)
 90.48.260 and Chapter 173-201A WAC)

TO: Roger J. Knutzen, Commissioner/Secretary
 Skagit County Drainage and Irrigation Improvement District No. 14
 9255 Chuckanut Drive
 Burlington, WA 98233

On December 14, 2012, Skagit County Drainage and Irrigation Improvement District No. 14 submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on January 30, 2013.

The drainage system improvements include excavation to modify channels, replacement of a bridge with a culvert, installation of a new culvert, and installation of new floodgates in order to improve capacity and flow in an existing drainage system through the following four actions:

- Joe Leary Slough/Benson Heights Road Culvert – An additional culvert is proposed to be located at the Benson Heights Road crossing on Joe Leary Slough (30 linear feet). The new 5-foot culvert will be located adjacent to the existing 15-foot arch culvert. The top of the new culvert will be placed at the same elevation as the top of the existing culvert. The new additional 5-foot culvert will assist channel capacity during storm and flood events. The culvert will insure capacity to pass a 100-year peak flow event.
- South Spur Ditch Maintenance Dredging and Channel Widening – Work will include removal of accumulated sediments and widening of most of the length of the South Spur Ditch from the Joe Leary Slough-Maiben Ditch confluence upstream to the Josh Wilson Road, a distance of approximately 5,400 feet. The widened channel will have an average bottom width of 13 feet. Side slopes will be established at a 2:1 ratio to ensure the channel banks remain stable. Total quantity of excavation below ordinary high water is approximately 1,870 cubic yards (cy) (of the estimated total excavation of 13,200 cy). The applicant has stated that modifications to this watercourse are needed to restore original channel capacity and to expand conveyance to accommodate the Bayview Ridge upland area runoff.
- South Spur Ditch Flood Gate Structure – A new flood gate structure will be installed on South Spur Ditch 100 feet above confluence point with Joe Leary Slough and Maiben

Ditch. Floodgates will include two 5-foot diameter culverts with attached gates set side-by-side to prevent flood backflow from entering South Spur ditch. Total quantity of construction fill is estimated at 1,300 cy of clean fill over 40 linear feet.

- South Spur Ditch Bridge Replacement with Culvert – The existing wooden field access bridge will be removed and replaced with a 9-foot arch culvert. Total quantity of fill is estimated at 28 cy over 20 linear feet. The existing old bridge will be removed and new culvert placed utilizing an excavator.

The project is located near Burlington, Skagit County, Washington, Joe Leary Slough and South Spur Ditch, Section 22, T. 35 N., R. 3E., WRIA 3.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will meet the applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

- A1. For purposes of this Order, the term "Applicant" shall mean Skagit County Drainage and Irrigation Improvement District No. 14 and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #10103 and Corps Reference #NWS-2012-1165.
- A3. Work authorized by this Order is limited to the work described below:
- Joe Leary Slough/Benson Heights Road Culvert – An additional culvert is proposed to be located at the Benson Heights Road crossing on Joe Leary Slough (30 linear feet). The new 5-foot culvert will be located adjacent to the existing 15-foot arch culvert. The top of the new culvert will be placed at the same elevation as the top of the existing culvert. The new additional 5-foot culvert will assist channel capacity during storm and flood events. The culvert will insure capacity to pass a 100-year peak flow event.
 - South Spur Ditch Maintenance Dredging and Channel Widening – Work will include removal of accumulated sediments and widening of most of the length of the South Spur Ditch from the Joe Leary Slough-Maiben Ditch confluence upstream to the Josh Wilson Road, a distance of approximately 5,400 feet. The widened channel will have an average bottom width of 13 feet. Side slopes will be established at a 2:1 ratio to ensure the channel banks remain stable. Total quantity of excavation below ordinary high water is approximately 1,870 cubic yards (cy) (of the estimated total excavation of 13, 200 cy). The applicant has stated that modifications to this watercourse are needed to restore original channel capacity and to expand conveyance to accommodate the Bayview Ridge upland area runoff.
 - South Spur Ditch Flood Gate Structure – A new flood gate structure will be installed on South Spur Ditch 100 feet above confluence point with Joe Leary Slough and Maiben Ditch. Floodgates will include two 5-foot diameter culverts with attached gates set side-by-side to prevent flood backflow from entering South Spur ditch. Total quantity of construction fill is estimated at 1,300 cy of clean fill over 40 linear feet.
 - South Spur Ditch Bridge Replacement with Culvert – The existing wooden field access bridge will be removed and replaced with a 9-foot arch culvert. Total quantity of fill is estimated at 28 cy over 20 linear feet. The existing old bridge will be removed and new culvert placed utilizing an excavator.

The Applicant will be out of compliance with this Order and must reapply with an updated application if additional activities and/or subsequent changes to the project not authorized by this Order are needed.

- A4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
- A5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 permit.
- A6. The Applicant shall send (per A2) a copy of the final Section 404 Corps permit to Ecology's 401/CZM Federal Permit Manager within 2 weeks of receiving it from the Corps.
- A7. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
- A8. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A9. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
- A10. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48), or the federal Clean Water Act, Ecology will issue an administrative order to incorporate any such changes or amendments applicable to this project.
- A11. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.

A12. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.

A13. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

B. Water Quality Conditions:

B1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(1)(e)(i), unless otherwise authorized by this Order.

B2. Water quality sampling and monitoring:

- a. Locations of samples: At a minimum, sampling during in-water activities shall take place at:
 - i. An early warning point 50 feet downstream from the activity if no turbidity curtains are in place, or
 - ii. 10 feet downstream from the last (most downstream) turbidity curtain.
- b. Number of samples: Representative water quality samples shall be taken a minimum of three times per day during any in-water work.
- c. Parameter to be sampled: Water samples shall be collected and analyzed for turbidity.
- d. Equipment: A transparency tube shall be utilized to determine turbidity.
- e. Recording samples: All sampling results shall be recorded.

B3. Benchmark Values: Using a transparency tube, if transparency is:

- a. Less than 33 centimeters (cm), but equal to or greater than 6 cm at 50 feet downstream from the activity with no turbidity curtains in place, or 10 feet downstream from the last (most downstream) turbidity curtain, then additional BMPs shall be implemented.
- b. Less than or equal to 6 cm at 50 feet downstream from the activity with no turbidity curtains in place, or 10 feet downstream from the last (most downstream) turbidity curtain either of these points, then the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, the Applicant shall assess the efficacy of the site BMPs and update or improve the

BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.

- B4. Reporting: If no exceedances are detected per Condition B3, results of water quality monitoring/sampling shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.
- B5. Notification of exceedances using a transparency tube: If turbidity transparency less than or equal to 6 cm is detected through water quality sampling, the Applicant shall notify Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #10103, Attn: 401/CZM Federal Project Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:
- i. A description of the nature and cause of exceedance.
 - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance.
 - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
 - iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the exceedance, turbidity results and location, photographs, and any other pertinent information.

C. Conditions for Construction Activities:

General Conditions:

- C1. Applicant shall obtain coverage and comply with Ecology's National Pollution Discharge Elimination System Construction Stormwater General Permit for this project.
- C2. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- C3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C4. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

- C5. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland a minimum of 50 feet and, where practical, 200 feet, from waters of the state including wetlands, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- C6. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- C7. Excavated sediments shall be deposited in adjacent fields and reincorporated into the field soils or disposed of offsite.
- C8. Excavated sediments shall not be sidecast into wetlands.
- C9. All exposed surface soils below Ordinary High Water Mark (OHWM) shall be immediately stabilized post-construction utilizing the appropriate combination of BMPs to include blanket products (i.e., coir products, jute mat, and erosion control blankets) coupled with seeding, planting, or mulching.
- C10. Work shall not be conducted in rain events of a magnitude of ¼ inches within 24 hours or predicted rain events of more than ¼ inch within 24 hours.
- C11. Ditch banks shall be stabilized with 2:1 slopes in order to prevent sloughing.

In-Water Conditions:

- C12. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.
- C13. The Applicant shall use tarps or other containment method when cutting or drilling over water to prevent debris, sawdust, concrete and asphalt rubble, and other materials from entering the water.
- C14. Clean Fill Criteria: Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.
- C15. All work shall be conducted utilizing mechanical equipment operating from adjacent uplands.
- C16. Work shall be conducted during low discharge period, in late summer to early fall.
- C17. Installation of the Joe Leary Slough/Benson Heights Road culvert shall be conducted in the dry.

South Spur Ditch Conditions:

- C18. Turbidity curtains shall be properly installed and maintained for any in-water work in South Spur Ditch. Additional turbidity curtains shall be installed downstream of the first turbidity curtain as needed in order to minimize turbidity.
- C19. Turbidity curtains shall remain in place in South Spur Ditch until in-water work is completed and disturbed areas are stabilized.
- C20. Turbidity curtains shall be removed slowly in order to minimize turbidity, and upstream turbidity curtains shall be removed prior to downstream turbidity curtains.

D. Emergency/Contingency Measures:

- D1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- D2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- D3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
- D4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
 - a. Cease operations at the location of the violation or spill.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
 - d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

E. Timing Requirements

E1. This Order expires three (3) years from the date of issuance of the Corps permit.

F. Reporting and Notification Requirement Conditions

F1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager:

- At least three (3) days prior to the start of construction.
- Within 14 days after completion of construction at the project site.

Notification, referencing Corps Reference #NWS-2012-1165, Order #10103 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

F2. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction is complete.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<p>Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503</p> <p>Pollution Control Hearings Board 1111 Israel Road SW STE 301 Tumwater, WA 98501</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608</p> <p>Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903</p>

CONTACT INFORMATION

Please direct all questions about this Order to:

Rebekah Padgett
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-7129
rebekah.padgett@ecy.wa.gov

MORE INFORMATION

Pollution Control Hearings Board Website
www.eho.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board
<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

Chapter 371-08 WAC – Practice And Procedure
<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

Chapter 90.48 RCW – Water Pollution Control
<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

Chapter 173-204 WAC – Sediment Management Standards
www.ecy.wa.gov/biblio/wac173204.html

Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington
www.ecy.wa.gov/biblio/wac173200.html

**Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of
Washington**

www.ecy.wa.gov/biblio/wac173201A.html

SIGNATURE



Erik Stockdale, Interim Section Manager
Wetlands/401 Unit
Shorelands and Environmental Assistance Program
Northwest Regional Office

9-12-2013

September 12, 2013

ATTACHMENT A

**SKAGIT COUNTY DRAINAGE AND IRRIGATION
IMPROVEMENT DISTRICT NO. 14
DRAINAGE SYSTEM IMPROVEMENTS PROJECT
Water Quality Certification Order #10103**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #10103 Section 401 Water Quality Certification for the Skagit County Drainage and Irrigation Improvement District No. 14 Drainage System Improvements Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company